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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/893,997	06/29/2001	Martin Bondo Jorgensen	0459-0625P	5697

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HARNES, DICKEY & PIERCE, P.L.C.  
P.O. BOX 8910  
RESTON, VA 20195

EXAMINER
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LE, HUYEN D

ART UNIT	PAPER NUMBER
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2646

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/893,997	Applicant(s) JORGENSEN ET AL.	
	Examiner HUYEN D. LE	Art Unit 2646	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 14-16, 18-28, 30-33 and 35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 17, 29 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 14-16, 18-28, 30-33 and 35 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Claims 1-13, 17, 29 and 34 are directed to a construction of a microphone assembly.

Claims 14-16, 18-28, 30-33 and 35 are directed to the processing means and controlling means for programming an electronic communication device and a microphone assembly, and the connection means for connecting the electronic communication device to an external programming system.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 a generic claim.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to

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be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

3. This application contains claims 14-16, 18-28, 30-33 and 35 have been drawn to an invention nonelected with traverse in Paper received on 01/14/05. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Drawings***

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the directional microphone having at least two sound inlet spouts (claim 3), one of the at least two inlet spouts of the directional microphone merging with the at least one inlet spout of the omni-directional microphone into a combined spout (claim 5), the sound inlet spouts of the one or more directional microphones and/or omni-directional to be combined with one or more spouts of external microphones outside

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the assembly (claim 7), one or more switches (claim 10), a volume control (claim 13), and a moisture filter (claim 29) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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6. Claims 3-4, 5 and 7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification does not teach how to construct the sound inlet spout(s) of the directional microphone or omni-directional microphone to a sound inlet port of the controlling means as claimed in claims 3 and 4.

The specification does not teach how to construct one of the at least two inlet spouts of the directional microphone merging with the at least one inlet spout of the omni-directional microphone into a combined spout as claimed in claim 5.

The specification does not teach how to construct and combine the sound inlet spouts of the one or more directional microphones and/or omni-directional with one or more spouts of external microphones outside the assembly as claimed in claim 7.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-10, 12, 17 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Killion (U.S. patent 5,524,056).

Regarding claims 1-4, 6, 17 and 34, as best understood with regarding 112, 1<sup>st</sup> as mentioned above, Killion teaches a microphone assembly (figures 1 and 16-20) for mounting in

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an electronic communication device (figures 18, 19). As shown in figures 18-20, the microphone assembly comprises one or more sound inlet ports (440, 400, 400', 415, 415'), one or more microphones (15, 20, 65, 70, 445, 450) and one or more controlling means (55, 395, 395', 410, 435, 475, 480, 485) that is an integrated part of the microphone assembly.

Regarding claims 5 and 7, as best understood with regarding 112, 1<sup>st</sup> as mentioned above, the inlet spout of the directional microphone (445, 450) merges with the at least one inlet spout of the omni-directional microphone (440) into a combined spout (figure 19).

Regarding claim 8, as broadly claimed, Killion shows the controlling means that is positioned to facilitate operation of the controlling means by applying a predetermined force as claimed (see the switch 435 and figures 18, 19, 20).

Regarding claims 9-10 and 12, as broadly claimed, it is inherent that the operations of the Killion hearing aid device comprises powering down (on/off) or activating (55, 435) the device.

9. Claims 1-10, 12, 17 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruegg (U.S. patent 3,875,349).

Regarding claims 1-4, 6-10, 12, 17 and 34, as best understood with regarding 112, 1<sup>st</sup> as mentioned above, Ruegg teaches a microphone assembly (figures 1 and 5) for mounting in an electronic communication device (hearing aid device). As shown in figure 5, the microphone assembly comprises one or more sound inlet ports (31, 32, 33, 34, 35, 36, 37), one or more microphones (11, 12) and one or more controlling means (22, 33, 36, 37) that is an integrated part of the microphone assembly.

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Regarding claim 5, as best understood with regarding 112, 1<sup>st</sup> as mentioned above, the inlet spout of the directional microphone (12) merges with the at least one inlet spout of the omni-directional microphone (11) into a combined spout (33, 34, figure 5).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 11-13 and 29, as interpreted in a different manner, are rejected under 35 U.S.C. 103(a) as being unpatentable over Killion (U.S. patent 5,524,056) or Ruegg (U.S. patent 3,875,349).

Regarding claims 11-13, as interpreted in a different manner, Killion or Ruegg does not specifically show a push button, a tragus responsive switch, a turning knob, on/off switch or a volume control as claimed. However, the examiner takes the Office Notice that providing an



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on/off button or a knob for the switch, and/or a volume control in a hearing aid device is very well known in the art.

Therefore, it would have been obvious to one skilled in the art to provide any type of switch such as a button or a knob and/or a volume control in the hearing aid of Killion or Ruegg for better adjusting and operating the device.

Regarding claim 29, Killion or Ruegg does not show a moisture filter in the microphone assembly. However, the examiner takes the Office Notice that providing a moisture filter in a microphone assembly is known in art.

Therefore, it would have been obvious to one skilled in the art to provide a moisture filter in the microphone assembly of Killion or Ruegg for better protecting the assembly.

### ***Response to Arguments***

12. Applicant's arguments filed 01/14/05 have been fully considered but they are not persuasive.

Responding to the arguments about the restriction requirements, the examiner refers back to the Office Action. Further, the Applicant should note that the group of claims 1-13, 17, 29-34 is directed to a construction of an apparatus of a microphone assembly, and the group of claims 14-16, 18-28, 30-33 and 35 is directed to a connector, the processing and controlling means for programming and connecting to an external programming system.

Therefore, the restriction requirements are proper. However, if claim 1 is allowable, the Applicant could rejoin claims 14-16, 18-28 and 35 as remarked on page 3.

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***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Killion (U.S. patent 5,878,147) teaches a direction microphone assembly.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SINH TRAN can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



HL  
August 19, 2005

